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IN THE SUPREME COURT
OF THE UNITED STATES

FREDERICK W. COPELAND,

Appellant,

vs. Case No. 75-337

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAKE COUNTY, a Corporation

Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Appeal from the Circuit Court for

Citrus County; John W. Booth, Judge.

COUNSELS

Frederick W. Copeland
P. O. Box 523, Crystal River, Fla. 32629
For Appellant.

Charles B. P. Sellar
800 N. Boulevard, Leesburg, Fla. 32748
For Appellee.

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JURISDICTION

Appellant, FREDERICK W. COPELAND, presents this, his petition for a writ of certiorari, and states that orders entered by the Trial Court dated March 17, 1966, appended with this petition, September 12, 1966, November 27, 1961, October 17, 1968, October 19, 1973, August 3, 1973, February 15, 1973 and May 17, 1972, which orders aforesaid denied appellant "equal protection of the law" and "due process" as provided by the Fourteenth Amendment to the Constitution of the United States and the liberties warranted by the Fifth Amendment to the Constitution of the United States, which orders, appellant alleges are inconsistent with the elements of the case, statutes and decisions presented to the Trial Court and further herewith presented with expansion for purpose of further showing merit, and in support the appellant shows the following:

1. Appellant alleges jurisdiction of the Court by its own decree extending its authority to civil action cases and cases involving jurisdiction of the states and individual liberties. Appellant alleges further that the court has jurisdiction over the subject matter of this appeal by virtues of the herewith appended letters, orders, petitions, motions, affidavits, exhibits, statutes and decisions of other courts in like cases, by State's failure to honor its own process and by reference to the accompanying motions to Reverse Judgment Amended, Motion for Set Aside Adjudication of Incompetency, Petition for Rehearing with Amendment for further clarification, Petition for Rehearing Dismissed Appellate Review or to Remand to Courts of Original Jurisdiction for Rehearing, Petition to Remand Dismissed Incompetency Proceedings to Court of Original Jurisdiction for Hearing, Motion to Strike Warranty Deeds, Motion for Ejection and Motion on Forcible Entry and Detention are incorporated in this appeal, and in support, decisions cited below shows jurisdiction, to-wit:

Crescent Wharf & Warehouse Co. v. Pilesbury.
Walling v. James V. Reuter, Inc.
State of Minnesota v. National Tea Co.

(R. Vol I, 1-44; 168-147)

STATEMENT OF THE CASE

The background of the case commenced November 27, 1961, in Citrus County, Florida, when appellant was adjudged incompetent in the CITRUS COUNTY COUNTY JUDGE'S COURT, committed to the Veterans Administration Hospital, Tuskegee, Alabama, by reason of schizophrenia, paranoia, which diagnosis proved to be erroneous entirely, and while appellant was held incompetent, appelant's spouse conveyed his property without order of the Court in violation of statutory provisions on October 27, 1962. Since appellant was hospitalized in Veterans Administration Hospital by commitment and State Courts have declined to take jurisdiction over appellant's being, and because his incompetency was due to his service connected disability, there are some questions involved, namely, "due process," equal protection under the law, and restriction of First Amendment Freedoms by adjudging appellant incompetent on premises of schizophrenia, paranoia, when only symptomatology of his service-connected anxiety reaction prevailed;

2. The property described as given:

Lots 195 and 196, KNIGHT'S ADDITION to the Town of Crystal River, Florida, according to the map or plat thereof recorded in Plat Book I, page 28, Public Records of Citrus County, Florida. (R, Vol. II, 6-125).

was conveyed by Warranty Deed October 27, 1962, to appellee by appellant's spouse as Individually as wife and as Guardian of the person and property of FREDERICK W. COPELAND, Incompetent. In order to save this property for appellant, his sister and daughter leased the foregoing described property on a rent-lease basis with the understanding that the monies arrived therefrom would keep the payments going on the mortgage obligation. Some $2,412.31 was so paid and was continuing until appellee stopped payment by demanding tenants to send payments directly to his office. By this time appellant had regained his civil rights through restoration of his competency,

(R, Vol I, 50-57)

September 8, 1964. From this time on, appellant was continually asking appellee to return him his property. At one time appellee had agree to let appellant resume the mortgage obligation at the point he left off, and this is what appellant expected, however, instead appellee decided to demand full settlement instead of bringing payments up to date. There occurred on this property in September 1965 a land fissure or calamity causing $2,300 in damages which damages were repaired by appellant since he was demanding his property. Rather than return appellant's property appellee filed his complaint for mortgage foreclosure September 3, 1965, alleging non-payment of mortgage obligation when the truth is the record shows that in actuality, appellant was less than $30 in arrears.

(R, Vol. I, 50-72, 832-87).

ARGUMENT

The hearing was had on mortgage foreclosure complaint September 7, 1966, at which time all evidence offered by the appellant was denied admission and the order entered gave appellee possession of appellant's property without receiving all evidence in the case, charged appellant interest from date of last payment to date of hearing regardless of appellee having conveyance on property commencing October 27, 1962, which meant that appellant was not in charge of property, and for appellant to pay some $4,423.36 in interest, insurance and other costs when appellant was not in controlling authority of property was usurious in character. This was the reason for the appeal. Appellant did not intend paying one cent more in illegal interest than was justly due appellee. And since appellee was in control of property by conveyance at time of land subterranean fissure, appellant holds that the damage was appellee's liability and appellant should justly be, in discretion of the Court, refunded his $2,300 for landslide damage. Since appellant was only asking for adjustment in mortgage and was not trying to evade his responsibility, it was only just for the Court to deny foreclosure and render an equitable order for balance as supported by Lieberbaum v. Surcomber

(R, Vol II, 38-107)

Hotel Corp. Also, according to Florida Law rendered in Koscharek v. Fisher since appellee had not entered into foreclosure without delay, there could be no foreclosure basd on accleration clause.

On appeal appellant amended the record to include the evidence submitted at the Final Hearing of Mortgage Foreclosure rendered September 7, 1966 and by a series of orders the Appellate Court granted the amendments. According to Florida Appellate Rules, Rule 3.6, provides that only evidence before the Trial Court constitutes the Record-on-Appeal. This being the case, there has never been a decision on the merits in Mortgage Foreclosure rendered September 7, 1966 and appellant justly has contention in the Court. Since there has not been a hearing on the merits in the case, then rightly so, in the discretion of the Court.

SHOULD NOT SUPREME COURT OF UNITED STATES DECISIONS RENDERED IN 391 U. S. 955 AND 393 U. S. 971 BE SET ASIDE?

SHOULD NOT SUPREME COURT OF FLORIDA DECISION RENDERED IN 209 SO. 2D 670 BE SET ASIDE?

Then, if in the discretion of the Court, the foregoing is granted, then

SHOULD NOT FINAL DECREE OF MORTGAGE FORECLOSURE RENDERED SEPTEMBER 7, 1966, WITHOUT ADMITTING ALL PERTINENT EVIDENCE, BE SET ASIDE?

FURTHERMORE the Final Decree of Mortgage Foreclosure was entered the 12th day of September, 1966 and therefrom appelant commenced his appeal process with order for supersedeas bond being entered October 6, 1966, which order for supersedeas bond granted appellant 30 days before sale of mortgage as is lawfully provided providing there are no objections entered into the Record. Therefore, upon posting this order, the Certificate of Title by Clerk and the Certificate of Sale and Disbursement could not be rightly entered before October 13, 1966. However, this was not the case. The Certificate of Title by Clerk and the Certificate of Sale and Disbursement were both entered the 6th day of October, 1966 in violation of Section 702, Florida Statutes:

> If no objections to such sale be filed in the proceeding within ten days after filing of such certificate of sale, the clerk shall thereupon complete and file in the proceeding a further certificate of title . . . (R, VOL I, 76-79)

Therefore, the Certificate of Title by Clerk was entered in violation of Section 702, Florida Statutes, above cited and said certificate of title by clerk, should, in the discretion of the Court, be vacated and set aside. The legal implication of the foregoing is that appellee has never rightly came into possession of appellant's property and with this legally insufficient title by clerk, appellee made application to the Court for Writ of Assistance and under authority of same ejected appellant from his property, piled appellant's household furnishings into the public street and left the same there to rot and decay.

WHEREFORE, the only hearing had in Mortgage Foreclosure was rendered March 8, 197[illegible] and rightly so, if there is no decision based on this hearing, then appellant should be placed in possession of his property. Furthermore, the proper adjustment should be made in regard to total indebtedness of appellant on this obligation. The hearing held March 8, 197[illegible] was just a hearing without regard to merit of the case. The decisions were based on what was in the preceding hearing and case and not the amended case as approved and granted by the Appellate Court. The hearing and the subsequent decision failed to recognize elements of usurious interest, the conveyance of October 27, 1962, the damages caused by landslide while appellee held property, the legally insufficient certificate of title by clerk, the legally insufficient certificate of sale, the order for supersedeas which granted 30 days before sale of mortgage, the pre-filing of motions, affidavits and exhibits. Wherefore, appellant contends that he has been relieved of his property without due process and (TRANS, 1-54)

without equal protection of the law, to-wit:

Garrett v. Reid, 1943, 13 So. 2d 97:244 Ala. 254:
"Due process of law" means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing, and judgment without such citation and opportunity to be heard cannot be upheld.

Gill v. Wilder, 1928, 116 So. 870, 95 Fla. 901:
Legal remedies, supplemented by injunction, generally are sufficient to afford due process.

Sorensen v. Jacobson, 1951, 232 P. 2D 332, 125 Mont. 148:
Due process requires an orderly proceeding adapted to nature of the case and in accordance with the law, in which a person has an opportunity before the taking of property to be heard and to defend, protect, and enforce his rights.

Rosenblum v. Rosenblum, 1943, 42 N.Y.S. 2D 626, 181 Misc. 78:
The "due process of law" provision of this Amendment and Amend. 5 guarantees to every person his day in Court and reasonable opportunity to be heard or defend and it requires orderly proceedings in competent tribunal in accordance with generally establishd rules not violative of fundamental rights.

Marquette Corp. v. Priester, D.C. S.C. 1964, 234 F. Supp. 799.
Court should be loath to overturn judgment unless relief is compelled by unusual or exceptional circumstances, but once proper circumstances are found, this rule providing for setting aside of judgment should be given liberal construction to end that justice is accomplished.

In re: City of Coral Gables, I.F.R.D. 600, 28 U.S.C.A. following Section 723c:
The Federal Rules contemplates an orderly administration of justice and recognize all the provisions of constitution in regard to due process of law.

Sun Insurance Co. v. Branham, D.C. Pa. 1945, 65 F. Supp. 512:
The question of due process is a federal question.

Travelers Insurance Co. v. Branham, D.C. Pa. 1945, 65 F. Supp 512:
A supersedeas bond prevents all further proceedings in the subordinate court except such as are necessary to preserve the rights of the parties and has no retroactive operation so as to deprive the judgment of its force and authority from the beginning.

Houston Fire & Cas. Insurance Co. v. Ivens, C.A. Fla. 1963, 323 F. 2D 112:
Upon approval of supersedeas bond by clerk of reviewing court and further action or proceeding under judgment of district court would be stayed pending appeal.

Ivor B. Clark Co. v. Hogan, D.C. N.Y. 1969, 296 F. Supp. 407:
Party taking appeal from order of district court involving money judgment is entitled to stay of that judgment upon posting of supersedeas bond.

Keohane v. Swarco, Inc. C.A. Ohio, 1963, 320 F. 2D 429:
Making a motion for amended and additional findings of fact is not a prerequisite to appelate review of a judgment dismissing a complaint.

Snyder v. Dravo Corp., 6 F.R.D. 546:
The right to amend a pleading is addressed to the discretion of the court, and great liberality should be allowed where it is necessary to bring about a furtherance of justice.

Continental Mfg. Corp. v. Scranton Storage Battery Corp., D.C. Pa. 1958, 22 F.R.D. 99:
This rule requiring court to grant leave to amend freely when justice so requires was promulgated to give effect to principle that cases should be decided on their merits and not on

technicalities.

Flaska v. Little River Marine Const. Co., C.A. Fla. 1968, 389 F. 2D 885:

Dismissal of action with prejudice and entry of judgment by default for failure of litigant to prosecute with reasonable diligence or to comply with district court's orders or rules of procedure are drastic remedies which should be used only in extreme situations, as the court has a wide range of lesser sanctions.

601 West 26 Corp. v. Equity Capital Co., App. 177 So. 2D 739 (1965):

Mortgage foreclosure procedures are of statutory origin and must be strictly construed.

Thompson v. Kyle, 39 Fla. 578, 86 So. 439 (1920):

Usury is a matter of defense in a mortgage foreclosure suit:

B. A. Lott, Inc. v. Padgett, 1943, 14 So. 2D 667, 153 Fla. 304:

Judgments of the United States District Court became and ceased to be liens under the same conditions as judgments of state courts which became liens on debtor's real estate.

Women's Catholic Order of Foresters v. Special School District of North Little Rock, Pulaski Co., C.C.A. Ark. 1939, 105 F. 2D, 716:

The matter of interest on judgments entered in federal courts was controlled by laws of state in which such court sat.

Purvis v. Frink, 61 Fla. 712, 54 So. 862 (1911):

Where a contract is found to be usurious, only the actual principal sum can be enforced.

Lyle v. Winn, 45 Fla. 419, 34 So. 158 (1936):

Where it appears from the decree in foreclosure that a portion

of the money reported to be due by the master is tainted with usury, it was error to allow any sum whatever for interest.

Beacham v. Carr, 122 Fla. 736, 166 So. 456 (1936):

Court of equity will not permit use of design formulated in mind of lender to evade evident purpose of usury laws and exact unlawful interest.

Fegers v. Pampano Farms, 104 Fla. 123, 139 So. 201 (1932):

That defendant tendered interest due before institution of mortgage foreclosure suit and before notice that complaint would accelerate due date was a good defense.

Koscharek v. Fisher, Fla. App. 1962, 145 So. 2D 755:

Delay or failure to foreclose mortgage will be deemed to have waived right under acceleration clause to declare entire indebtedness due, if he does not elect to do so within reasonable time after default, particularly where such delay has operated to advantage of mortgagee or to the detriment of mortgagor.

Lieberbaum v. Surcomber Hotel Corp., Fla. App. 192 So. 2D 88:

A chancellor has a right to deny foreclosure of a mortgage based upon acceleration where there are substantial equities in the case which render the acceleration unscoinable.

Other Federal authorities relied upon are as follows:

Sanderson v. City of Willmar, 1968, 162 N. W. 2D 494 282 Minn. 1:

"Property" as used in various guarantees against taking property without due process of law embraces every kind of property or right over which a person may have exclusive control or dominion.

Weimer v. Bunbury, 1874, 30 Mich. 201:

Due process of law is not necessarily judicial process; much of the process by means of which the government is carried on,

and the order of society maintained, is purely administrative or executive, which is as much due process of law as is judicial process.

State exrel. Smith v. 16.50, 10.04629, 3.34, 1.84, 5.97741, 3.94 and 7.49319 Acres of Land, More or Less, Del. Super. 1964, 200 A 2D 241, Affirmed 208 A. 2D 55:

Just compensation should be assessed in terms of fair market value of premises and in order that compensation be truly just, fair market value must be assessed with respect to condition of land immediately preceding taking.

Ghasler Properties, Inc. v. Preston, Ohio Com. Pl. 1962, 184 N.E. 2D 552:

Wresting from property owner of property which was not, in fact, nuisance without compensating property owner therefor is violation of Constitutional limitations.

Hoffman v. Stevens, D.C. Pa. 1959, 177 F. Supp. 898:

Depriving one of property without just compensation is a denial of due process of law.

Predeaux v. Des Moines Joint-Stock Land Bank, D.C. Minn. 1929, 34 F. 2D 308, Appeal dismissed 51 S. Ct. 40:

Legislature cannot take away mortgagor's right to redeem from foreclosure, or to retain possession of premises until right of redemption expires; but it can either enlarge or diminish remedy available to mortgagee so long as it leaves to it some effective way of enforcing its rights.

Schuregmann Bros. Giant Super Markets v. Eli Lilly & Co., C.A. La. 1953, 205 F. 2D 788:

Right of property owner to fix price at which he will sell is an inherent attribute of property itself and, as such, is within protection of this clause.

Heck v. Nicholas, C.C. A. Neb. 1925, 6 F. 2D 10:

A state's sovereignty over real property within its boundaries is supreme, and it may establish rules of law and procedure affecting transfers and settlement of title without violating the federal Constitution provided that property is brought under control of its courts and reasonable opportunity to be heard is given all interested parties.

Appellant shows unto the Court that there are three Federal questions involved in the procedures of the property heretofore described as follows:

(1) The question of due process of law,
(2) The question of equal protection of law, and
(3) The question of just compensation.

Commencing with the hearing rendered September 7, 1966, there might be the question of due process whenever the Appellee systematically denied all pertinent evidence into admission and then proceeded to petition the Court for an order based only on his evidence. The Appellate Court admitted the evidence and this evidence finally was before the Trial Court in hearing rendered March 8, 1972. There is definitely the matter of due process of law in the Clerk issuing the Certificate of Title out of time in regard to statutory law, whether due process being judicial or administrative as provided in Weimer v. Bunbury. The assessing of interest charges against Appellant when appellee held the recorded title to property is questionable in regard to due process of law, the law being that if a portion of the money reported to be due is tainted with usury, then no interest is allowed. In Lieberbaum v. Surcomber Hotel Corp., Florida Appellate, there is a decision which provides that a chancellor has a right to deny foreclosure of a mortgage based upon acceleration where there are substantial equities in the case which render the acceleration unscoinable, and since Appellant was not seeking to not pay just due mortgage obligation, but only to commence payment providing the

proper provisions could be found to make it possible, then there should have been no foreclosure. Considering the foregoing decision, then foreclosure was without due process. Again in Koscharek v. Fisher, Florida Appellate, a decision was rendered which declared that if there was delay or failure to foreclose mortgage also waived right under acceleration clause to declare entire indebtedness due, if he does not elect to do so within reasonable time after default, particularly where such delay has operated to advantage of mortgagee or to the detriment of mortgagor. In this case there was delay from April, 1962 to September 7, 1966, to foreclose on mortgage. In the interim Appellee has entered into a lease-rent agreement and on October 27, 1962 a conveyance was obtained from appellant's spouse which was signed by appellant's spouse "Individually and as Wife of Frederick Waymond Copeland, Incompetent." Since this deed was in violation of Chapter 294.10, Florida Statutes, and hence, did not operate against the interest of appellant, however, according to Chapter 689.03, Florida Statutes, the deed was valid in regard to appellant's spouse and conveyed her interest in the property. Since appellee had never obtained rightful title to appellant's property, lease-rent agreement with option and the writ of assistance which ejected appellant were all without due process.

Appellant has not been accorded equal protection of the law in the foregoing case. According to James V. West Virginia Board of Regents:

> This clause due process and equal protection clause mean that rights of all persons must rest on same rules and be similarly applied in like circumstances and neither state nor its several subdivision or officials may engage in any discriminating practices based upon race, color, creed, or national origin or deprive any person, under color of any state law or regulation, of his life, liberty or property without due process of law.

Appellant alleges that he has been victimized through orders contrary to the decisions cited herein, laws enacted and administrative or

judicial decrees. Wherefore, appellant prays the SUPREME COURT OF THE UNITED STATES will resolve the conflicts and enter the correct judgment. Thus, ending appellant's injustices through unequal protection of the law. As further provided in Agnew v. Supreme Court in and for Los Angeles County:

> One taking timely appeal is entitled to perfect it, and suppression of his exercise of such right amounts to denial of equal protection of law.

According to the provisions of Hoffman v. Stevens, Ghaster Properties, Inc. v. Preston, Ohio and State exrel Smith, depriving, wresting property from owner without just compensaton is denial of due process of law. Appellant readily admits his obligations for the property and only asked for the opportunity to commence paying the same under proper terms and for the mental anguish appellee has caused appellant compensation according to laws involved is justified. WHEREFORE, appellant prays the Court will grant the following, in its discretion:

With the conveyance of October 27, 1962, appellant's mortgage liability ceased to exist because the property was no longer in appellant's name, but that of appellee's. Regardless of circumstances, appellant cannot justly be charged interest and other costs beyond the date October 27, 1962. On February 15, 1962, mortgage principal balance was $10,161.71; interest on principal through 10/27/62, date of conveyance, was $506.77; taxes for 1961, $65.00; taxes for 1962, $108.08; fire insurance for 1962 was $55.00 making a total liability of $735.20 in other costs, thus, the total mortgage liability was $10,869.91 as of October 27, 1962, the date of conveyance. Appellant justly concedes that he is obligated for this sum and nothing more, in the discretion of the Court, because the property was conveyed from appellant's name to that of appellee's. The Financial Statement shows credit of $2,412.31 and appellant is justly entitled to the $2,300.00 for repairs due to landslide on property when and after property had been

(R, VOL I, 64-65)

conveyed out of appellant's name, the $2,412.31 being for the rent-lease agreement. If appellant is given credit for the funds due to rent-lease agreement and the $2,300.00 repair bill due to landslide, then the principal mortgage balance is $6,157.60. This is in disagreement with the principal balance of $12,446.75 and attorney's fee of $1,300.00 rendered September 7, 1966, in Final Decree of Mortgage Foreclosure. While Appellant was still asking for return of his property or chance to redeem the same, Appellee sold appellant's property for $6,000.00. This figures agrees in principle with the $6,157.60 figure arrived at by appellant in the foregoing argument. If so, it appears that appellee gave the grantees credit aforesaid for $2,300.00 and $2,412.31, credit for landslide and rent-lease agreement payments, respectively.
(R, VOL II, 52-72)

Appellant has sustained loses of $2,300.00 in landslide; $5,000.00 for loss of household furnishings because of eviction in face of supersedeas bond and an illegal Certificate of Title by Clerk to appellee; rent collections of $2,990 yearly.

Appellant holds that he is entitled to rent value or value of actual rent loss since appellant was releaved of his property by the conveyance of October 27, 1962, and in the illegal manner of simply taking over of appellant's property. Attorney for appellee has admitted unto the Court that the conveyance of October 27, 1962 was a wrongful action. Appellant is justly entitled to twice monthly rental value, or $280.00 montly from date of conveyance, October 27, 1962 to the present or for 136 months for a total rent value collection of $38,080.00 under provisions of Chapter 82, Florida Statutes (82.14), or according to Federal Rules of Civil Procedure appellant is justly entitled to trebble value of $420.00 monthly for 136 months for a total of $57,120.00. In any event, in case of an award grant, appellant is justly entitle to 10% interest charge, in discretion of the Court.

REVIEW OF MOTION TO SET ASIDE ADJUDICATION OF INCOMPETENCY

The appellant was arrested on Sunday, November 19, 1961 on complaint of his spouse, and no November 27, 1961 he was adjudged incompetent in THE COUNTY JUDGE'S COURT, IN AND FOR CITRUS COUNTY, FLORIDA, by reason of schizophrenia, paranoia, with propensities of "threatening wife" and "obsessive ideas." The diagnosis of schizophrenia reaction was first given in November 1960 at the Veterans Administration Hospital, Tuskegee, Alabama, while appellant was undergoing treatment for his anxiety reaction, appellant's service connected disability. Under treatment, the allergies of appellant, which are now of record, became dominant and for these reasons and non-other were the reasons for the diagnosis of schizophrenic reaction. While undergoing examination at the Shand Teaching Hospital, Gainesville, Florida, June 13-16, 1961, drugs were administered and appellant had the same reaction and it was then and there that appellant was given the diagnosis of schizophrenia, paranoia. On June 18, 1961 the appellant registered at the Florida A.&M. University, Tallahassee, Florida, and on Agust 11, 1961 was conferred the Master of Education degree. Following the adjudication of incompetency in the COUNTY JUDGE'S COURT, IN AND FOR CITRUS COUNTY, FLORIDA on November 30, 1961, appellant was admitted to the Veterans Administration Hospital, Tuskegee, Alabama, for treatment of schizophrenia, paranoia, and appellant remained there through November, 1962; however, appellant was granted leave home January 25, 1962 for a period of thirty days. Appellant was issued a Certificate of Recovery May 2, 1963, but he was denied restoration in the Court June 1963. Appellant was finally restored his judicial sanity on September 8, 1964; appellant began court proceedings on March 7, 1966, in the Court of jurisdiction for purpose of showing unto the Court that the appellant had never really had an episode of schizophrenia, but appellant had suffered from his service connected disabilities and nothing more. In contention of the foregoing, the appellant shows the following:
(R, VOL II, 1-34)

1. The order adjudicating appellant incompetent, entered November 27, 1961, for reason of schizophrenia, paranoia, propensities of threatening wife and obsessive ideas lacked evidence and was purely heresay. There is much evidence to the contrary from neighbors and others who are willing to testify the truth providing they are given the opportunity to testify. The Court ruled lack of jurisdiction in the matter and dismissed the same. Affidavits of record (Petition to Demand Dismissed Incompetency Proceedings to Court of Original Jurisdiction for Hearing) which shows unto the Court that the affiants knew of no threats or obsessive ideas of appellant. Appellant completed the requirements for the Master of Education degree on August 11, 1961, began school planning period August 18th and had not missed one day out of school, including Friday, November 17, 1961, without incident, and then suddenly appellant was arrested without cause and jailed. The foregoing expression shows that appellant was very well orientated to his surroundings and hardly would have regressed to threats and ideas out of context of society.

(R, Vol II, 14-24, 31-33)

FURTHERMORE, appellant was greatly prejudiced by the adjudication based on extremely indefinite evidence as provided in F. & A. Ice Cream Co. v. Ardens Farms Co. and in U.S. v. Peace Information Center as follows, respectively:

> Due process require that a federal statute making certain conduct criminal should designate with certainty and definiteness act which it proscribes.
>
> A criminal statute must define the crime denounced, otherwise it will be unconstitutional as depriving one of life, liberty or property without due process of laws.

In Mallatt v. Ostrander Ry. and Timber Co., D.C. Or. 1942, 46 F. Supp. 250:

> A vague or uncertain statute does not meet the requirement of "due process of law."

Smith v. Crumlish, 1966, 218 A. 2D 596, 207 Pa. Super. 516:

> Statute which is vague or overbroad is unconstitutional insofar as it operates in area of freedoms guaranteed by Amend. 1.

"Threatening wife" and "obsessive ideas" are vague and indefinite for an order adjudicating one incompetent by reason of schizophrenia, paranoia, and when there is no evidence supporting the same. Appellant could not be removed from his position of principal and teacher for these reasons when he has Constitutional protection, especially since appellant had the fullest respect of the faculty, pupils, school authorities and the community. Furthermore, hardly could appellant be considered mentally ill by reason of a psychosis and at the same time maintain a straight "A" academic record at the graduate level as shown by the record. Other evidence of performance at institutions of higher learning is attached to this motion as Exhibit No. 1. Regardless of how difficulty the task of teaching might have been, the record shows that appellant was normally and successfully meeting his administrative and supervisory duties and his teaching responsibility. No teacher, parent, community or pupil knew of appellant threatening his wife or obsessive ideas and to remove appellant from his position violated his constitutional rights as provided below:

Abel v. Gausha, D.C. Wis. 1970, 313 F. Supp. 1030:

> A teacher in a public school may not be discharged for exercising constitutionally protected freedoms.

Lafferty v. Carter, D.C. Wis. 1970, 310 F. Supp. 465:

> Employment of a teacher in a public school may not be terminated for reason that he exercised freedom of expression guaranteed to him by this Amend. and Amend. 14.

Orr v. Thorp, D.C. Fla. 1969, 308 F. Supp. 1369:

> Assertion of rights under this Amend. by public school teacher will usually not warrant their dismissal.

Roth v. Board of Regents of State College, D.C. Wis. 1970 Fed. Supp. 972, Affirmed 446 F. 2D 806:

A teacher's freedom of speech cannot be limited unless it can be shown that his utterances harm a substantial public interest.

Pred v. Board of Public Instruction of Dade County, Fla., C.A. Fla. 1969, 415 F. 2D 851:

Protections of this Amend. have special meaning when teachers are involved.

Teachers could not be denied their rights under this Amendment on contention that they could speak, write and believe as they chose only so long as they did it elsewhere and not as public school teachers.

Gauge v. Joint High School Dist. No. 1, D.C. Wis. 1970, 310 F. Supp. 984:

Teacher in a public elementary or secondary school is protected by Amend. 14 Clause against a non-renewal decision which is wholly without basis in fact and also against the decision which is impermissibly based on race, religion, or exercise of freedom of expression under this Amendment.

Carole v. Local 269 International Brotherhood of Electrical Workers, 1943, 31 A. 2D 233, 133 N.J. Eq. 144:

The right to earn a livelihood is a "property right" which is guaranteed by Amend. 14 and this Clause and by Const. N.J. Art. 1, par. 1.

Appeal of Sleeper, 1952, 87 A. 2D 115, 147 Me. 302:

The confinement of one who is mentally ill in a mental hospital is a deprivation of his liberty under this clause, unless confinement is accomplished and continued with person's voluntary consent.

Creamer v. Board of Road Commissioners of Alger County, 1949, 37 N.W. 2D 699, 325 Mich. 27:

Veterans' Preference Act, Act No. 22, Sect. 2, Pub. Acts 1944, prohibiting removal or suspension of veterans employed in any public

department, except for cause, does not violate due process on grounds that it creates a perpetual preference without time limit.

The only times the appellant experienced any difficulty in employment were under exhaustion as evidenced by appellant repeating himself and under influence of some drug which appellant had no former knowledge of its side effects. Wherefore, although appellant experienced difficulty with his anxiety reaction (injury), appellant was successfully meeting his duties at the time he was removed from employment. Appellant's symptoms are numbness on left side of head, dizziness, poor vision at times or difficulty in reading, sometimes just plain nervous when reading for more than brief periods and at times difficulty in speaking under influence of exhaustion or drugs. These are all the anxiety reaction symptoms and these are the same symptoms attributed to appellant's schizophrenic reaction. The record further shows that under the influence of drugs such as tranquilizers and anti-depressants appellant is impaired to the extent that his responses are changed drastically, but the record further shows that once the stimulant is removed appellant shows immediate improvement. (The record came as appellant's medical history was made a part of his claim for Social Security benefits and through appeal and error, the record was served on appellant.) Appellant shows unto the Court that his head is never normal in feeling, but that appellant has no bad habits, his decorum is publicly approved, appellant is publicly and sociably accepted including companionship of girlfriend, publically sought after by all mankind and is capable of making a contribution to society, as evidenced by appellant's EXHIBIT No. 1 herewith attached.

Equally, the order adjudicating appellant incompetent prejudiced appellant's right of equal protection under the law and here and now, in the discretion of the Court, should be declared unconstitutional retroactive to November 19, 1961, the date appellant was jailed on petition of his spouse charging appellant with being mentally ill when,

in essence, only minor family dissolution was responsible. The Chapter 394.22, Florida Statutes, provided that any family member or next of kin could sign the petition alleging incompetency (the State of Florida has since amended this provision making it mandatory for three members of the family to sign the petition). The foregoing action violated the equal protection of the Fourteenth Amendment to the Constitution of the United States as shown in James v. West Virginia Board of Regents and in Maxwell v. Bugbee, 250 U.S. 525:

> The purpose of the equal protection clause of the Fourteenth Amendment to the Federal Constitution is to secure every person within state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the expressed terms of a statute or by its improper execution through duly constituted agents.

and that appellant's spouse on basis of her lone petition had appellant removed from his position thus in violation of the equal protection clause of the Fourteenth Amendment. The foregoing position is substantiated by appelant's Exhibits No. 2 and 3, and Exhibit No. 4.

(R, VOL II, 34-61)

2. Appellant further shows by Exhibit No. 5 that he is under guard of electronic surveillance which holds appellant under electronic peonage much to appellant's discrimination in that everywhere appellant travels around his environment there is this broadcasting and holding appellant under discriminatory servitude in violation said Fourteenth Amendment to the United States Constitution. Furthermore, with the same electronic surveillance attempt is made to frighten away appellant's clients and thus further harm his business which consists 90% of tax service—preparation of individual, business, partnership and corporate tax returns, Federal Highway use tax, Federal and State employer's quarterly returns, the annual returns for the foregoing, some bookkeeping, Social Security Administration procedures and some Veterans Administration affairs, paperwork from some other Federal agencies and welfare. The money earned from this business supplements my children's VA. educational allowance (the three in college) and support for the other two in high school.

Family members give appellant physical help such as recording and compiling. Appellant spends considerable time researching tax problems from his modern and current tax library. (R, VOL IV).

3. By Exhibit No. 6 appellant shows unto the Court that his freedom has been imposed upon and restricted and yet official approval has been granted but without avail to appellant. In the discretion of the Court, WHY EXHIBIT No. 6 CANNOT BE IMPLEMENTED?

4. Appellant is greatly under disability by reason of injury to central nervous system, anxiety reaction, and has been since 1943. The diagnosis of schizophrenic reaction came in 1960 in the Veterans Administration Hospital, Tuskegee, Alabama. Why should not appellant be entitled to his diagnosed anxiety reaction which restricts appellant in numerous ways and for which appellant has to constantly make adjustments, one kind or another? Equally, appellant was given rating of 100% disability commencing November 27, 1961, service connected, but was not given pay for his disability until July 1971. In the discretion of the Court, is appellant entitled to retroactive benefits?

(R, VOL II, 93-105)

QUESTIONS PRESENTED

The following questions are presented:

— 1 —

WHETHER MORTGAGE FORECLOSURE SHOULD BE VACATED HEARING FAILED TO ADMIT INTO EVIDENCE ALL THE PERTINENT FACTS AND EXHIBITS ESSENTIAL TO A MERIT DECISION?

— 2 —

WHETHER MORTGAGE FORECLOSURE SHOULD BE VACATED OR SET ASIDE IF APPELLEE FAILED TO EXERCISE MORTGAGE ACCELERATION CLAUSE?

— 3 —

WHETHER MORTGAGE FORECLOSURE SHOULD BE VACATED OR SET ASIDE IF INTEREST CHARGES ARE USURIOUS?

— 4 —

WHETHER APPELLANT'S MORTGAGE LIEN ENTERED NOVEMBER 27, 1959, WAS SUPERSEDED BY CONVEYANCE ENTERED OCTOBER 27, 1962?

— 5 —

WHETHER THE CONVEYANCE OF OCTOBER 27, 1962, WITHOUT ORDER AS PROVIDED BY CHAPTER 294.10, FLORIDA STATUTES, WAS LEGALLY INSUFFICIENT AND PREJUDICED APPELLANT'S PROPERTY RIGHTS WHEREIN APPELLEE NOTORIOUSLY CLAIMED APPELLANT'S PROPERTY PRIOR TO FORECLOSURE, SETEMBER 7, 1966?

— 6 —

WHETHER APPELLANT'S SPOUSE SURRENDERED HER LEGAL RIGHTS AND DOWER INTERESTS IN PROPERTY WHEN SAID SPOUSE CONVEYED PROPERTY AS WIFE INDIVIDUALLY, AS GUARDIAN OF THE PERSON AND PROPERTY OF FREDERICK W. COPELAND, INCOMPETENT, AND DESERTED HER SPOUSE SINCE NOVEMBER 27, 1961, AND WHEN THE COURT ENTERED A DECREE PRO CONFESSO AGAINST HER?

— 7 —

WHETHER THE COURT WILL ORDER WRIT OF HABERE FACIAS POSSESSIONEM, IN FAVOR OF APPELLANT, FOR PROPERTY SEIZED FROM HIM BY THE UNLAWFUL CONVEYANCE OF OCTOBER 27, 1962, AND THE LEGALLY INSUFFICIENT CERTIFICATE OF TITLE AND SALE AND DISBURSEMENT BY CLERK, BOTH ENTERED OCTOBER 6, 1966, IN VIOLATION OF FLORIDA STATUTES?

— 8 —

WHETHER THE COURT WILL ORDER REFUND OF EXPENDITURES FOR CASUALTY LOSS IN AMOUNT OF $2,300.00 FOR

LOSS OF HOUSEHOLD FURNISHINGS AND EQUIPMENT FOR LEGALLY INSUFFICIENT EJECTION IN PRESENCE OF APPELLANT'S SUPERSEDEAS AND LEGALLY INSUFFICIENT CERTIFICATE OF TITLE BY CLERK, AND RENTAL DOUBLE VALUE OF $38,360.00, RENTAL VALUE OF $19,180.00 OR TREBLE VALUE OF $57,540.00 YEARLY FOR A TOTAL LOSS OF $34,135.00 RENTAL VALUE, $64,270.00 DOUBLE RENTAL VALUE, AND $98,405.00 TREBLE RENTAL VALUE BASED ON ACTUAL LOSS OF RENTS EQUAL TO $2,990.00 YEARLY FOR A PERIOD OF 137 MONTHS OF ILLEGAL HOLDING? RENT-LEASE CREDIT OF $2,412.31 AND MORTGAGE BALANCE OF $10,161.71 BEFORE ADJUSTMENTS?

— 9 —

WHETHER THE COURT WILL VACATE ORDER ADJUDICATING APPELLANT INCOMPETENT, RENDERED NOVMBER 27, 1961, OR SET ASIDE SAID ORDER OR REMAND TO THE COURT OF ORIGINAL JURISDICTION FOR REHEARING BASED UPON MERIT DECISION?

— 10 —

WHETHER THE COURT WILL VACATE APPELLEE'S ATTORNEY FEE OF $1,300.00?

— 11 —

WHETHER THE COURT WILL SET ASIDE WARRANTY DEEDS ENTERED AUGUST 20, 1971, WHICH DEEDS CONVEYED APPELLANT'S PROPERTY WITH A LEGALLY INSUFFICIENT CERTIFICATE OF TITLE IN AN ACTION IN THE LOWER COURT WHILE THE CASE WAS UNDER APPEAL?

CONCLUSION

The decisions of the COUNTY JUDGE'S COURT, IN AND FOR CITRUS COUNTY, FLORIDA AND THE CIRCUIT COURT IN AND FOR THE FIFTH JUDICIAL CIRCUIT, CITRUS COUNTY, FLORIDA, and the

U.S. Ct. of Appeals, 5th Cir.

~~SUPREME COURT OF FLORIDA,~~ which decisions appellant seeks to have reviewed are in direct conflict with the above mentioned decisions, statutes, Acts of the Congress of the United States and the Constitution of the United States as above cited. Considering the reasons and authorities set forth, it is firmly believed, in the discretion of the Court, that the decision affirming the Trial Court's decision and the other Appellate Court are erroneous and in direct conflict and the decisions set forth should be approved by this Court as the controlling laws for the State of Florida. WHEREFORE, appellant prays that this Court will grant a writ of certiorari and enter its order quashing the decisions and orders hereby sought to be reviewed, approving the decisions, statutes and Acts of the Congress and Constitutional guarantees as handed down by the SUPREME COURT OF THE UNITED STATES and other Appellate Courts as the correct decisions, and granting such and other relief as shall seem right, just and proper to the Court.

FREDERICK W. COPELAND
P. O. Box 523
Crystal River, Florida 32629

CERTIFICATE OF SERVICE

I do certify that true copy hereof has been furnished via U.S. mail to Honorable Charles B. P. Sellar, 800 North Boulevard West, Leesburg, Florida, and to Honorable Robert Shevin, Attorney General of Florida, Tallahassee, Florida, on this 1st day of March, A.D. 1974.

Appellant

APPENDIX

Cases:

Abel v. Gausha, D.C. Wis. 1970, 313 F. Supp. 1030:
A teacher in a public school may not be discharged for exercising constitutionally protected freedoms.

Agnew v. Superior Court in and for Los Angeles County, 1953, 257 P. 2D 661, 118 Cal. App. 2D 230:
One taking timely appeal is entitled to perfect it, and suppression of his exercise of such right amounts to denial of equal protection of law.

Appeal of Sleeper, 1952, 87 A. 2D 115, 147 Me. 302:
The confinement of one who is mentally ill in a mental hospital is a deprivation of his liberty under this clause, unless confinement is accomplished and continued with person's voluntary consent.

B. A. Lott, Inc. v. Padgett, 1943, 14 So. 2D 667, 153 Fla. 304:
Judgments of the United States District Court became and ceased to be liens under the same conditions as judgments of state courts which became liens on debtor's real estate.

Beacham v. Carr, 122 Fla. 736, 166 So. 456 (1936):
Court of equity will not permit use of design formulated in mind of lender to evade evident purpose of usury laws and exact interest.

Carrole v. Local No. 269 International Brotherhood of Electrical Workers, 1943, 31 A. 2D 233, 133 N.J. EQ. 144:
The right to earn a livelihood is a "property right" which is guaranteed by Amend. 14 and this Clause and by Const. N. J. Art. 1, par. 1.

In re: City of Coral Gables, 1 F.R.D. 600, 28 U.S.C.A. following Section 723c:

The Federal Rules contemplates an orderly administration of justice and recognize all provisions of constitution in regard to due process of law.

Continental Mfg. Corp. v. Scranton Storage Battery Corp., D.C. Pa. 1958, 22 F.R.D. 99:

This rule requiring court to grant leave to amend freely when justice so requires was promulgated to give effect to principle that cases should be decided on their merits and not on technicalities.

Cremer v. Board of Road Com'rs. of Alger County, 1949, 37 N.W. 2D 699, 325 Mich. 27:

Veterans' Preference Act, Act. No. 22, Sect. 2, Pub. Acts 1944, prohibiting removal or suspension of veterans employed in any public department, except for cause, does not violate due process on grounds that it creates a perpetual preference without time limit.

F. & A. Ice Cream Co. v. Ardens Farms Co., D.C. Cal. 1951, 98 F Supp. 180:

Due process requires that a federal statute making certain conduct criminal should designate with certainty and definiteness act which it proscribes.

Flaska v. Little River Marine Const. Co. C. A. Fla. 1968 389 F. 2D 885:

Dismissal of action with prejudice and entry of judgment by default for failure of litigant to prosecute with reasonable diligence or to comply with district court's orders or rules of procedure are drastic remedies which should be used only in extreme situations, as the court has a wide range of lesser sanctions.

Fegers v. Pampano Farms, 104 Fla. 123, 139 So. 2D 755:

That defendant tendered interest due before institution of mortgage foreclosure suit and before notice that complaint would accelerate due date was a good defense.

Garrett v. Reid 1943, 13 So. 2D 97, 244 Ala. 254:

Due process of law means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing, and judgment without such citation and opportunity to be heard cannot be upheld.

Gauge v. Joint School Dist. No. 1, D.C. Wis. 1970, 310 F. Supp. 984:

Teacher in a public elementary or secondary school is protected by Amend. 14 Clause against a non-renewal decision which is wholly without basis in fact and also against the decision which is impermissibly based on race, religion, or exercise of freedom of expression under this Amendment.

Chasler Properties, Inc. v. Preston, Ohio Com. Pl. 1962, 184 N.E. 2D 552:

Wresting from property owner of property which was not, in fact, nuisance without compensating property owner therefore is violation of Constitutional limitations.

Gill v. Wilder, 1928, 116 So. 870, 95 Fla. 901:

Legal remedies, supplemented by injunction, generally are sufficient to afford due process.

Heck v. Nicholas, C.C.A. Neb. 1925, 6 F. 2D 10:

A state's sovereignty over real property within its boundaries is supreme, and it may establish rules of law and procedure affecting transfers and settlement of title without violating the federal Constitution provided that property is brought under control of its courts and reasonable opportunity to be heard is given all interested parties.

Hoffman v. Stevens, D.C. Pa. 1959, 177 F. Supp. 898:
Depriving one of property without just compensation is a denial of due process.

Houston Fire & Cas. Insurance Co. v. Ivens, C. A. Fla. 1963 323 F. 2D 112:
Upon approval of supersedeas bond by clerk of reviewing court and further action or proceeding under judgment of district court would be stayed pending appeal.

Ivor B. Clark Co. v. Hogan D.C. N.Y. 1969, 296 F. Supp. 407:
Party taking appeal from order of district court involving money judgment is entitled to stay of that judgment upon posting of supersedeas bond.

Keohane v. Swarso, Inc. C. A. Ohio, 1963, 320 F, 2D 429:
Waking a motion for amended and additional findings of fact is not a prerequisite to appellate review of a judgment dismissing a complaint.

Koscharek v. Fisher, Fla. App. 1962, 145 So. 2D 755:
Delay or failure to foreclose mortgage will be deemed to have waived right under acceleration clause to declar entire indebtedness due, if he does not elect to do so within reasonable time after default, particularly where such delay has operated to advantage of mortgages or to the detriment of mortgager.

Lafferty v. Carter, D.C. Wis. 1970, 310 F. Supp. 465:
Employment of a teacher in a public school may not be terminated for reason that he exercised freedom of expression guaranteed to him by this Amend. and Amend. 14.

Lieberbaum v. Surcomber Hotel Corp., Fla. App., 192 So. 2D 88:
A chancellor has a right to deny foreclosure of a mortgage based upon acceleration where there are substantial equities in the case which render the acceleration unscoinable.

Lyle v. Winn, 45 Fla. 419, 34 So. 158 (1936):
Where it appears from the decree in foreclosure that a portion of the money reported to be due by the master is tainted with usury, it was error to allow any sum whatever for interest.

James v. West Virginia Bd. of Regents, D.C., W. Va. 1971, 322 F. Supp. 217, Affirmed 448 F. 2D 785:

This clause due process and equal protection clause mean that rights of all persons must rest on same rules and be similarly applied in like circumstances and neither state nor its several subdivisions or officials may engage in any discriminating practices based upon race, color, creed, or national origin or deprive any person, under color of any state law or regulation, of his life, liberty or property without due process of law.

Mallatt v. Ostrander Ry. and Timber Co., D.C. Or. 1942, 46, F. Supp. 250:
A vague or uncertain statute does not meet the requirement of "due process of law.'

Marquette Corp. v. Priester, D.C., S.C. 1964, 234 F. Supp. 799:
Court should be loath to overturn judgment unless relief is compelled by unusual or exceptional circumstances, but once proper circumstances are found, this rule providing for setting aside of judgment should be given liberal construction to end that justice is accomplished.

Maxwell v. Bugbee, 250 U.S. 525:
The purpose of the equal proection clause of the Fourteenth Amendment to the Federal Constitution is to secure every person within state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the expressed terms of a statute or by its improper execution through duly constituted agents.

Orr v. Thorp, D.C. Fla. 1969, 308 F. Supp. 1369:
Assertion of rights under this Amend. by public school teacher will usually not warrant their dismissal.

Predeaux v. Des Moines Joint-Stock Land Bank, D.C. Minn. 1929, 34 F. 2D 308, Appeal dismissed 51 S. Ct. 40:
Legislature cannot take away mortgager's right to redeem from foreclosure, or to retain possession of premises until right of redemption expires; but it can either enlarge or diminish remedy available to mortgagee so long as it leaves to it some effective way of enforcing its right.

Pred v. Board of Public Instruction of Dade County, Fla. C.A. Fla. 1969, 415 F. 2D 851:
Protections of this Amend. have special meaning when teachers are involved. Teachers could not be denied their rights under this Amendment on contention that they could speak, write and believe as they chose only so long as they did elsewhere and not as public school teachers.

Purvis v. Frink, 61 Fla. 712, 54 So. 862 (1911):
Where a contract is found to be usurious, only the actual principal sum can be enforced.

Rosenblum v. Rosenblum, 1943, 42 N.Y.S. 2D 626, 181 Misc. 78:
The "due process of law" provision of this Amendment and Amend. 5 guarantees to every person his day in Court and reasonable opportunity to be heard or defend and it requires orderly proceedings in competent tribunal in accordance with generally established rules not violative of fundamental rights.

Roth v. Board of Regents of State Colleges, D.C. Wis. 1970, 310 Fed. Supp. 972 Affirmed 446 F. 2D 806:
A teacher's freedom of speech cannot be limited unless it can be shown that his utterances harm a substantial public interest.

Sanderson v. City of Willmar, 1968, 162 N.W. 2D 494, 282 Minn. 1:
"Property" as used in various guarantees against taking property without due process of law embraces every kind of property or right over which a person may have exclusive control or dominion.

Schuregmann Bros. Giant Super Markets v. Eli Lilly & Co. C.A. La. 1953, 205 F. 2D 788:
Right of property owner to fix price at which he will sell is an inherent attribute of property itself and, as such, is within protection of this clause.

601 West 26 Corp. v. Equity Capital Co., App. 177 Bo. 2D 739 (1965):
Mortgage foreclosure procedures are of statutory origin and must be strictly construed.

Smith v. Crumlish, 1966, 218 A. 2D 596, 207 Pa. Super 516:
Statute which is vague or overboard is unconstitutional insofar as it operates in area of freedoms guaranteed by Amend. 1.

Snyder v. Dravo Corp., 6 F.R.D. 546:
The right to amend a pleading is addressed to the discretion of the court, and great liberality should be allowed where it is necessary to bring about a furtherance of justice.

Sorensen v. Jacobson, 1951, 232 P. 2D 332, 125 Mont. 148:
Due process requires an orderly proceeding adapted to nature of the case and in accordance with the law, in which a person has an opportunity before the taking of property to be heard and to defend, protect, and enforce his rights.

State exrel. Smith v. 16.50, 10.04629, 3.34, 1.84, 5.97741, 3.94 and 7.49319 Acres of Land, More or Less, Del. Super. 1964, 200 A. 2D 241, Affirmed 208 A. 2D 55:
Just compensation should be assessed in terms of fair market value of premises and in order that compensation be truly just, fair market value must be assessed with respect to condition of land immediately preceding taking.

State of Minnesota v. National Tea Co., Minn. 1940, 60 S. Ct. 676, 309 U.S. 551:

The United States Supreme Court in exercise of its appellate jurisdiction has the power not only to correct errors of law in the judgment under review but also to make such disposition of the case as justice requires.

Sun Insurance Co. v. Branham, D.C. Pa. 1945, 65 F. Supp. 512:

The question of due process is a federal question.

Thompson v. Kyle, 39 Fla. 578, 86 So. 439 (1920):

Usury is a matter of defense in a mortgage foreclosure suit.

Travelers Insurance Co. v. Branham, D.C. Pa. 1945, 65 F. Supp. 512:

A supersedeas bond prevents all further proceedings in the subordinate court except such as are necessary to preserve the rights of the parties and has no retroactive operation so as to deprive the judgment of its force and authority from the beginning.

U. S. v. Peace Information Center, D.C. 1951, 97 F. Supp. 255:

A criminal statute must define the crime denounced, otherwise it will be unconstitutional as depriving one of life, liberty or property without due process of laws.

Walling v. James V. Reuter, Inc. La. 1944, 64 S. Ct. 826, 322 U. S. 671:

Where Supreme Court for any good reason may not properly proceed with the case brought to it on appeal, or where it is without power to proceed with the appeal, Court may in the exercise of its supervisory appellate power make such disposition as justice requires.

If a judgment has become moot, the Supreme Court may not consider its merits, but may make such disposition of the whole case as justice requires.

Weimer v. Bunbury, 1874, 30 Mich. 201:

Due process of law is not necessarily judicial process; much of the process by means of which the government is carried on, and the order of society maintained, is purely administrative or executive, which is as much due process of law as is judicial process.

Women's Catholic Order of Foresters v. Special School District of North Little Rock, Pulaski Co., C.C.A. Ark. 1939, 105 F. 2D 716:

The matter of interest on judgments entered in federal courts was controlled by laws of state in which such court sat.

STATUTES:

Chapter 82:14, Florida Statutes

Trial; evidence as to damages—On the trial, evidence shall be admitted as to the monthly rental value of the premises, and, in case of recovery by plaintiff, the jury shall fix his damages at double the rental value of the premises from the time of the unlawful or wrongful holding. But the damages in no case of detainer shall be fixed at more than rental value of the premises, unless the jury be satisfied from the evidence that such detention is willful and knowingly wrongful.

Chapter 294.10, Florida Statutes

Guardian's petition for authority to sell ward's real estate; notice by publication required; penalties—When any guardian of the estate of an infant or incompetent shall have the control or management or any real estate, the property of such infant or incompetent, and shall deem it necessary or expedient to sell the same, the guardian shall apply either in term time or in vacation by petition to the county judge or judge of the circuit court for the county in which said real estate may be situated for authority to sell the same, and if the prayer of said petition shall appear to the judge reasonable and just and financially beneficial to the estate of the

ward, he may authorize said guardian to sell said estate under such conditions as the interest of said infant or incompetent may, in the opinion of the said judge, seem to require. Such authority shall not be granted unless the guardian shall have given previous notice, published once a week for four consecutive weeks in a newspaper published in the county where the application is made, of his intention to make application to such judge for authority to sell the same, setting forth in said notice the time and place and to what judge said application will be made.

Chapter 394.22, Florida Statutes

Adjudication of persons mentally or physically incompetent; procedure.—

(1) PETITION FOR EXAMINATION OF PERSONS BELIEVED TO BE MENTALLY OR PHYSICALLY INCOMPETENT; PETITION. — Whenever any person within this state is believed to be incompetent by reason of mental illness, sickness, drunkness, excessive use of drugs, insanity, or other mental or physical condition, so that he is incapable of caring for himself or managing his property, or is likely to dissipate or lose his property or become the victim of designing persons, or inflict harm on himself or others, application by written petition, under oath, may be made to the county judge of the county wherein the alleged incompetent resides or may be found, or in the absence or disability of the county judge, to the judge of the circuit court of the county wherein such petition is filed, for a judicial inquiry as to the mental or physical condition or both, of the alleged incompetent.

(2) WHO MAY FILE PETITION.—The petition may be filed by:

(a) The mother, father, brother, sister, husband, wife, child or next of kin of the alleged incompetent; . . .

Chapter 689.03, Florida Statutes

Effect of such deed.—A conveyance executed substantially in the foregoing form shall be held to be a warranty deed with full

common law covenants, and shall just as effectually bind the grantor, and his heirs, as if said covenants were specifically set out therein. And this form of conveyance when signed by a married woman shall be held to convey whatever interest in the property conveyed which she may possess.

Chapter 702.02, Florida Statutes

Foreclosure procedure.—

(2) SALE BY CLERK.—In any final decree of foreclosure, the court shall direct its clerk to sell the mortgaged property at public sale on the day specified in such final decree, which day shall be not less than ten nor more than thirty days after the date of such final decree, and upon the terms and conditions as provided in such final decree.

(3) CERTIFICATION OF SALE.—After a sale of the mortgaged property, the clerk shall promptly complete and file in the proceeding a certificate of sale, . . .

If no objections to such sale be filed in the proceeding within ten days after the filing of such certificate of sale, the clerk shall thereupon complete and file in the proceeding a further certificate of title which shall be substantially in the following form: . . .

RULES

Florida Appellate Rules, Rule 3.6

RECORD-ON-APPEAL

2. What Constitutes. The record-on-appeal shall consist either of an original record of a transcript of record, or a stipulated statement prepared in accordance with these rules. A transcript of record shall be used only when so ordered by the lower court or stipulated by the parties. Appellant may, however, use a transcript as a matter of right if he elects to assume the cost thereof, which shall not be taxable as costs.

b. Duty to Prepare: Enforcement of Duties. The duty of preparing and transmitting to the court the record-on-appeal shall rest on the clerk of the lower court. The reporter shall have the duty of transcribing, certifying and transmitting to the clerk of the lower court such portions of the lower court proceedings as have been stenographically reported and designated by the parties. Appellant shall see that these duties are complied with and may enforce the same by motion in the lower or appellate court.

Federal Rules of Civil Procedures, Rule 9

Special Damages